

Small Business Bonding Assistance Program

WHEREAS: the State of Louisiana is home to numerous economically disadvantaged contracting businesses; and

WHEREAS: many of these economically disadvantaged contracting businesses find themselves at a competitive disadvantage in bidding for various public and private contracting jobs because they are limited by their lack of knowledge of management and financing techniques, standards, and procedures, and in particular by their inability to meet the managerial and financial standards set by surety companies; and

WHEREAS: if the skill, hard work, and enthusiasm of these economically disadvantaged contracting businesses is supplemented with sufficient professional and financial advice and assistance, then such businesses will be able to fairly compete for their first contracting jobs or increase their current bond limit and surety companies in Louisiana will be encouraged to assist such contractors; and

WHEREAS: Act Number 851 of the 1990 Regular Legislative Session created the Louisiana Small Business Bonding Assistance Program to provide such advice and assistance to economically disadvantaged contracting businesses and further provides that the program terminated on June 30, 1993; and

WHEREAS: Executive Order MJF 96-3, requires the Department of Economic Development to develop a program to assist economically disadvantaged businesses and one of the purposes of that assistance is to provide easier access to bonding assistance; and

WHEREAS: the State of Louisiana's economically disadvantaged contracting businesses Louisiana Small Business Bonding Assistance Program is allowed to continue its efforts in assisting these businesses.

NOW THEREFORE, I, MURPHY J. FOSTER, JR., Governor of the State of Louisiana, by virtue of the authority vested in me by the Constitution and laws of the State of Louisiana, do hereby order and direct the following;

SECTION 1: The Louisiana Small Business Bonding Assistance Program is hereby recreated within the Department of Economic Development.

SECTION 2: The terms used herein shall have the meaning ascribed to them in Louisiana R.S. 51:2303 unless the context clearly indicates a different meaning. However, the following terms shall have the following meanings;

A. *Approved Surety Company* means a surety company approved by the secretary for participation in providing direct bonding assistance to qualified contractors.

B. *Bonds* means any bond or security required for bid, payment, or performance of contracts.

C. *Department* means the Department of Economic Development.

D. *Director* means the director of the Louisiana Small Business Bonding Assistance Program, or a person duly authorized by the director to act on his behalf.

E. *Program* means the Louisiana Small Business Bonding Assistance Program, as provided for herein.

F. *Qualified Contractor* means an economically disadvantaged resident small business contractor which has obtained a certificate of accreditation from the Louisiana Contractor Accreditation Institute.

G. *Resident Small Business Contractor* means a small business enterprise headquartered, operating, and domiciled in the state and which is a contractor licensed under the laws of this state.

H. *Subcenter* means any subcenter of the Louisiana Small Business Development Center.

SECTION 3: The secretary of the Department of Economic Development, hereinafter referred to as secretary, shall select the director of the Louisiana Small Business Bonding Assistance Program. The secretary shall also assign a program assistant. The director and the program assistant shall devote all of their time to the development, implementation, and administration of the program.

SECTION 4: The director, in implementing the program, shall have the following powers, duties, and functions:

A. In General. The director shall assist resident economically disadvantaged small contracting businesses in acquiring the managerial and financial skills, standards, and assistance necessary to enable them to obtain bid, payment, and performance bonds from surety companies for either advertised or designated contracts.

B. Louisiana Contractor Accreditation Institute. The director shall establish a Louisiana Contractor Accreditation Institute, with the advice and assistance of the office of the Louisiana Small Business Development Center, the department, surety companies, and other businesses and associations related to the contracting field.

The institute shall be a standard course of instruction given under the supervision and coordination of the director by subcenters of the Louisiana Small Business Development Center to resident small business contractors. The instruction shall be intensive, practical training courses in financing, bidding for contracts, managing, accounting, and record keeping for a contracting business, with an emphasis on federal, state, local, or private programs available to assist small contractors. The institute course shall be given by professionals chosen by the director, who have practical knowledge and experience in those areas.

The institute shall be held by the subcenters in major cities throughout the state at times chosen by the director, which are convenient for people in the contracting business. The course of instruction and the textbooks or workbooks to be utilized in such instruction shall be selected or developed by the director with the advice and assistance of the subcenters in the state.

Any resident small business contractor or key manager of such a contractor may attend any course of instruction offered by the institute at any place and at any time such instruction is offered by a subcenter. The subcenters shall keep records of the attendance by such contractors or their employees at the various courses. When the records reflect that a resident small business contractor or a key management employee of such a contractor has attended all of the courses of instruction offered by the institute, the contractor shall be awarded a certificate of accreditation acknowledging his successful completion of the course.

A certificate of accreditation may be awarded by a subcenter upon approval by the director if a review of a contractor's education, experience, and business history indicates that the contractor, or a key management employee of such contractor, already possesses the knowledge and skills offered by the institute, or if the contractor or his employee successfully completes the test required of regular institute participants.

C. Technical and Support Assistance. Provided that the Louisiana Legislature establishes a Louisiana Small Business Bonding Assistance Fund, the director may provide a grant to a subcenter of no more than \$7,500 on behalf of a qualified contractor for the acquisition of the professional services of certified public accountants, construction management companies, the subcenter itself, or any other technical, surety, financial, or managerial professionals. Such professionals may assess or audit the operations, finances, bookkeeping, and record keeping of the qualified contractor and may make recommendations, prepare statements and reports, and consult with and train contractor personnel regarding any of the contractor's procedures and practices in order to assist the contractor to obtain a bond for a particular contract and, in the long run, to enhance the long term competitiveness and self-sufficiency of the contractor. This assistance shall only be available to a small business contractor on a one-time basis.

D. Bonding Assistance. Provided that the Louisiana Legislature establishes a Louisiana Small Business Bonding Assistance Fund, if a qualified contractor makes an application for a bond to an approved surety company for a public or private contracting job, but fails to obtain the bond because he is unable to meet the requirements of the surety company on such bonding contracts, for reasons other than non-performance, the approved surety company may apply to the director to have the bond confected and issued under the Louisiana Small Business Bonding Assistance Program as provided herein.

Upon receipt of such an application from a surety company, the director shall provide written notification of the application to the appropriate subcenter nearest the qualified contractor's principle place of business. The director and the secretary of the department shall review the application in order to verify that the bond being sought by the applicant is needed by the applicant and that the contract is within the contractor's capability to perform and the contractor has not been denied a bond due to non-performance. The director and the secretary of the department shall either approve or disapprove the application. If the application is approved, the surety company shall confect a contract with and issue a bond to the qualified contractor in the manner provided for herein.

The director may use money in the fund, provided that the legislature creates said fund, to guarantee the bonds issued by approved surety companies for qualified contractors who have applied to the director on behalf of such qualified contractors for a bond to be issued under the program.

If the director and the secretary of the department approve the application of such an approved surety company, then the director shall enter into an agreement with the surety company whereby the company shall enter into a contract with and issue the required bond to the qualified contractor at the standard fees and charges usually made by the surety for the

type and amount of the bond issued to the qualified contractor. The bond issued by the surety company shall be guaranteed by money in the fund, provided it is created. In return, the surety company shall agree to remit promptly to the director all fees or charges or other amounts collected by the company from the qualified contractor, except for the amounts of such fees and charges the director agrees to provide to the surety company as compensation to the company for entering into the contract. The surety company shall also agree to make a reasonable, good faith effort to pursue and collect any claims it may have against a qualified contractor who defaults on such bonds, including but not limited to the institution of legal proceedings against the defaulting contractor, prior to collecting on the guarantee; again, in return for such compensation to which the director and the surety company agree.

The money to be used to guarantee bonds and to pay defaulted bonds pursuant to this Section shall be all the money in the Louisiana Small Business Bonding Assistance Fund that is not otherwise expended, encumbered, or allocated for purposes provided for elsewhere in this executive order, provided said fund is created by the legislature. However, the full faith and credit of the State of Louisiana shall not be pledged to secure the bonds, and the state's liability shall be limited to the money appropriated by the legislature.

Provided that the legislature creates said fund, the director shall immediately deposit into the fund, all fees, charges, or other amounts collected by the director from the issuance of bonds as provided for herein.

E. Qualification for Technical and Support Assistance. Provided that the Louisiana Legislature establishes the Louisiana Small Business Bonding Assistance Fund, any resident economically disadvantaged small business contractor shall apply for the technical and support assistance provided herein at any subcenter in the state.

The subcenter, based upon standards established by the director, shall perform an initial evaluation of the applicant to determine whether he is qualified to participate in the program and whether he has sufficient capability to benefit from the program, the level of such capability, and his corresponding needs for the types of assistance provided for herein. The subcenter shall forward such application and evaluation to the director.

If the director and the secretary of the department determine that the contractor is qualified, has a need for the professional services, and has a sufficient level of capability, the secretary and the applicant shall then agree that the applicant shall fully cooperate and comply with the advice and recommendations of the director, the subcenter, and any professionals rendering services pursuant to the program, and that he shall abide by any rules related to the program. The contractor shall agree that a failure to cooperate, comply, or abide by the rules shall result in loss of services or a demand for reimbursement by the director.

Upon agreement to such conditions by the qualified contractor, the director shall provide to the appropriate subcenter a grant in an amount deemed sufficient by the director to meet the needs of the contractor, but in no case may any single contractor receive more than \$7,500 in grant-related services from this program.

The grant issued to assist the contractor shall be coordinated and administered by the subcenter under the supervision of the director. However, nothing herein shall be construed to restrict the rendering of services to the contractor by the subcenter over and above the services provided by the grant. The director and the subcenter shall monitor the performance of the contractor under the secured contract and shall provide such further assistance as is necessary to insure that all program requirements be met and that the contract is successfully completed.

F. Rules and Regulations. The director shall promulgate rules and regulations to implement the programs, procedures, and purposes set forth herein. Such regulations shall include, but shall not be limited to, the following:

(1) The standards and procedures for determining the course content and other requirements of the Louisiana Contractor Accreditation Institute, including the standards to be used to determine whether a certificate of accreditation should be awarded pursuant to Section 4 (B).

(2) The standards to be used by the director in determining whether a qualified contractor has the need and the level of capability, and whether he is otherwise eligible for professional assistance pursuant to the provisions of the program.

(3) The standards to be used by the director in determining whether a surety company and a qualified contractor shall be approved for participation in the direct bonding assistance.

(4) The standards to be used in determining the amount of compensation which may be deducted by an approved surety company from fees and charges and other amounts paid by a qualified contractor to the company pursuant to a bond issued under the provision of this executive order.

(5) The other terms and conditions by which the director shall guarantee a bond issued by an approved surety company, including the actions and procedures which will be required of such company in the event of a default by the contractor.

G. Other. Any other duties and functions as required by the governor.

SECTION 5: All departments, commissions, boards, agencies, and officers of the state, or any political subdivision thereof, and in particular, the Division of Administration, the Louisiana Small Business Development Center and each subcenter, the Department of Insurance, the Louisiana Public Finance Authority, and Northeast Louisiana University, School of Construction, are authorized and directed to cooperate with the Louisiana Small Business Bonding Assistance Program in implementing the provisions of this Executive Order.

SECTION 6: The provisions of this Executive Order are effective upon signature and shall remain in effect until amended, modified, or rescinded by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of the State of Louisiana, at the Capitol, in the City of Baton Rouge, on this 22nd day of March, 1996.

M.J. "Mike" Foster, Jr.
Governor

ATTEST BY

THE GOVERNOR
Fox McKeithen
Secretary of State
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